



January 30, 2001

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2001-0356

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143697.

The El Paso Police Department (the "department") received three requests for information pertaining to a specified police officer, including information relating to an investigation of child abuse. You claim that the most of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.115, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information submitted as Exhibits C, D and F, and the representative samples submitted as Exhibits G through K.<sup>1</sup>

You assert that Exhibits F, G, H, I, J, and K are excepted under section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 261.201(a) of the Family Code provides that:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The submitted information in Exhibits F, G, H, I, J, and K consist of files, reports, records and working papers used or developed in an investigation made of alleged or suspected child abuse under chapter 261 of the Family Code. You state that the department has no regulation that would allow for release of the information. Therefore, we conclude that Exhibits F, G, H, I, J, and K are confidential under section 261.201 of the Family Code and the department must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).*<sup>2</sup>

You also assert that portions of Exhibit C are excepted under section 552.117(2) of the Government Code. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complied with section 552.024 of the Government Code. Thus, you must withhold the marked information under section 552.117(2) of the Government Code.

You also assert that a driver's license number in Exhibit C is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the highlighted driver's license number under section 552.130(a) of the Government Code.

Further, you assert that a birth certificate in Exhibit D is excepted under section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official are excepted from required public disclosure under section 552.115 of the Government Code. However, since the birth certificate at issue does not appear to be held by the bureau of vital statistics or local registration officials, section 552.115 is inapplicable.

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<sup>2</sup>Because we find the information confidential under section 261.201 of the Family Code, we need not address your other asserted exceptions to disclosure for Exhibits F, G, H, I, J, and K.

In conclusion, you must withhold Exhibits F, G, H, I, J, and K under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Further, you must withhold from Exhibit C information excepted under section 552.117(2) of the Government Code and the driver's license number under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 143697

Encl: Marked documents

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